1975

Utah v. Marilyn Baker : Brief of Respondent

Utah Supreme Court

Golden W. Robbins; Attorney for Appellant.
Vernon B. Romney; Frank V. Nelson; Attorneys for Respondent.

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH, In the Interest of H____, F____R____ (06-24-65) a person under eighteen years of age. F____R____H____, by his next of kin and friends and custodians JOSE LUJAN and MAGGIE LUJAN,

Plaintiffs and Appellant,

vs.

MARILYN BAKER, CHRIS V. SAIZ and MRS. CHRIS V. SAIZ, his wife,

Defendants and Respondents.

Civil No. 13918

BRIEF OF RESPONDENT

Appeal from the Second Juvenile District Court for Salt Lake County, State of Utah, the Honorable Judith F. Whitmer, Presiding.

VERNON B. ROMNEY
Attorney General

FRANK V. NELSON
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

GOLDEN W. ROBBINS

705 Newhouse Building
Salt Lake City, Utah 84111

Attorney for Appellant

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal brought by the Appellants, Jose and Maggie Lujan, from an order entered in the Second District Juvenile Court, Salt Lake County, State of Utah denying the petition for extraordinary writ and keeping custody and guardianship of F____ R____ H____in the Utah State Division of Family Services.

DISPOSITION IN THE LOWER COURT

The Plaintiff-Appellants, Jose Lujan and Maggie Lujan, petitioned the Third Judicial District Court, Honorable Jay E. Banks, presiding, for a writ of habeas corpus in behalf of the minor child F____ R____ H____. At a hearing before the court on September 24, 1974, the Court ordered "that the question of custody and guardianship of F____ R____ H____be and is hereby certified to the Second District Juvenile Court, State of Utah, based upon Utah Code Annotated 55-10-78." (R. 38) The Juvenile Court, the Honorable Judith F. Whitmer, presiding upon proper hearing, did find and order that custody of the child F____ R____ H____ was continous since 1971, that the Petitioners did not have standing to bring the petition, and that the child was not being illegally detained as indicated by hearings and orders entered by the Juvenile Court in 1971. Therefore, the petition for writ of habeas corpus was denied by the Court.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the order entered denying the writ of habeas corpus on the grounds that the Petitioner-Appellants did not have standing and that the child was not being illegally detained.

STATEMENT OF FACTS

Shortly after the birth of F____ R____ H____, the Petitioners Jose and Maggie Lujan, the great uncle and great aunt of the child, took F____ R____ H____ into their home to take care of him and provide him with the necessities of life (R. 40). In 1971, the Second District Juvenile Court, the Honorable Judge Regnal

Garff, presiding, permanently deprived the natural parents of any and all rights in the child, pursuant to Utah Code Annotated Section 55-10-109, and placed custody of him in the Division of Family Services. (R. 2)

Thereafter, the Division of Family Services executed a valid agreement with the Petitioners Jose and Maggie Lujan making the Lujans the Foster Parents of F____ R____ H____ with the right that either party — with notice — could remove the child or have him removed from the Lujan Home. (R. 5)

In 1974, the Division of Family Services, pursuant to the rights of custody of F____ R____ H____, made the decision to take F____ R____ H____ out of the home of Petitioners and place him in the home of defendants Mr. and Mrs. Chris V. Saiz. To effectuate this change, Defendant Marilyn Baker, a Social Worker for the Division of Family Services placed the child in the Saiz's home. All the foregoing was done with notice to the Petitioners (R. 5) and by Court order dated September 5, 1974.

Thereafter, the Petitioners, without right or authority, took F____ R____ H____ out of the home of defendants, Saiz, and filed a petition for writ of habeas corpus in Third Judicial District Court. In the meantime, Michael Stead, Attorney for the County, filed an affidavit and order to show cause why the Petitioners should not be held in contempt of court regarding the removal of the child and why they should not relinquish physical custody of said child (R. 33). Hearing on this order was never held and all parties came before the Court on the Petitioner for writ of habeas corpus.

The Juvenile Court found, as per the findings of fact, that the

Petitioners did not have standing since they had no rights in the child, that the child was not being illegally detained, and that the petition for writ of habeas corpus should be denied.

From this order, the Appellants appeal the decision of the Juvenile Court. Respondents respectfully refer the court to §55-10-78, Utah Code Annotated, (1953, as amended, 1965) wherein it is specified that the name of the child shall not appear on the record in an appeal from the Juvenile Court.

ARGUMENT

POINT I

THE JUVENILE COURT DID NOT ERR IN CHANGING THE HEADING OF THE CASE AT BAR IN LIGHT OF THE COURT'S CONTINUING JURISDICTION OF THE MATTER OF CUSTODY OF THE MINOR CHILD.

The Appellants make an attempt to show through statutory and constitutional language that the District Court has exclusive jurisdiction for the extraordinary writs as sought in the case at bar. In so doing, Utah Code Annotated, Section 55-10-78 is cited, but only in part. Had the Appellants cited the entire statutory language of the pertinent portion of that section, there would be no question that the Juvenile Court acted properly in changing the name of the case to that which showed the proper Juvenile Court relationship. Utah Code Annotated, Section 55-10-78, provides:

> "Nothing contained in this act shall deprive the district courts of jurisdiction to appoint a guardian for a child, nor of jurisdiction to determine the custody of a child

upon writ of habeas corpus or when the question of custody is incidental to the determination of a cause in the district court; 44provided that in case a petition involving the same child is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same child, the district court shall certify the question of custody to the juvenile court for determination.'' (emphasis added)

The record clearly indicates the order of certification to the Second District Juvenile Court (R. 38) was entered for the determination of the entire matter, since the only matter before the District Court was whether the Lujans had any custody to assert. The Juvenile Court had continuing jurisdiction of the minor child pursuant to the order entered by the same court, Judge Garff presiding, in 1971, and as such the District Court deferred to that already existing jurisdiction of the Court and as per Utah Code Annotated, Section 55-10-78 certified the entire matter to the Juvenile Court.

The Appellants do not raise the issue of continuing jurisdiction on appeal, nor was it contested in the Juvenile Court. Therefore, it must be assumed by the Respondent that objection to such jurisdiction is waived by Appellants.

This indicated most clearly that the District Court acted properly in the certification, and that the Juvenile Court properly changed the titled of the case to show the status in the Juvenile Court.

Nevertheless, the mere change of title or heading is not paramount to the issues involved in this appeal. This issue is not material to the disposition of the case, but if this court should find

that the Juvenile Court erred in its action, Utah Rules of Civil Procedure, Rule 61 should apply. This rule states that:

> "No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

It is therefore seen that Argument I of the Appellants is without merit and must therefore be dismissed.

POINT II

NO EVIDENCE WAS NEEDED FOR THE DISPOSITION OF THE PETITION SINCE THE ORDER WAS MADE ON LEGAL RATHER THAN EVIDENTIARY ISSUES.

Appellants totally fail to distinguish the difference between dismissing a case on "legal" issues as compared to dismissing a case on "factual" evidence. When it is clearly understood that the case at bar was dismissed on a "legal" issue — standing — there is no need for evidence to be introduced which would go to the merits of the petition.

Page 10 of Appellants Brief states as follows:

> "The appellants were deprived of the privilege of showing that the juvenile court never had jurisdiction and to show the fact that Roger was never a neglected or dependent child."

The fact is simply that the jurisdictional question was decided in 1971 before Judge Garff and that the time for appeal had long since run, thus precluding this argument from being raised. The Court had jurisdiction originally, and has since continued such jurisdiction — even to the granting of the order to remove the child from the home of the Lujans. This issue is long since waived.

The Juvenile Court further declared, as the Respondents wish to emphasize, that the Appellants never have had legal custody (other than physical custody) since the parents were still alive and in 1971 the Court terminated all such parental rights and placed the child in the custody of the Division of Family Services.

The cases cited by Appellants, therefore, do not bear on the question before this Court on appeal. No one is contending that the Lujans did not care for the child as was the issue in *In Re Bradley et.al. v. Miller et. ux.*, 109 Utah 538, 167 P.2d 978 (1946) as cited by Appellants, but rather the Court herein stated:

> "Well, the question is what rights do they have. You see, that's what Mr. Stead is saying. They have no rights. Based on that foster care agreement that they signed, the arrangement could be terminated at any time, at the option of Family Services, not. . . .Yes, yes, sure I think everybody recognizes the equitable aspects of this whole thing but just based on strict legal interpretation. I don't think they have any standing. We've never held that a foster parent had any standing here." (R. 9)

Further, the Court said:

> "Look, Mr. Robbins, this is what I'm stuck with. I'm stuck with Judge Garff's order dated March 9, 1971, which reads as follows. 'All parental rights of the mother and the father are permanently terminated and legal custody and guardianship of the person of the above child is placed with the Utah State Division of Family Services, a licensed child-placing agency for placement in a suitable adoptive home. The Division of Family Services is hereby ordered to pay for the support and maintenance of said child until the adoptive placement is made.' That's what I've got and that's what we're dealing with and what I feel personally, what the moral issue is — you know. That's what I meant when I said I am stuck with this order. And the child is not being illegally detained by any stretch of the imagination because Family Services has legal custody. And what I feel I have to do and what I would like to do are two different things." (R. 13)

As indicated above, the legal issue of standing and prior continuing custody controlled in the Juvenile Court. These are legal issues where no factual evidence is needed. The Court dismissed the case for these reasons.

Because of the continuing nature of the Court's jurisdiction, Judge Whitmer and Attorney Robbins had the following dialogue:

"Judge Whitmer:

> Well, all I'm saying is that I don't think a Writ of Habeas Corpus is the proper way to get it before the Court because the child is not being illegally detained.

Golden Robbins:

> Well, it was. Today, it's not. It's in the custody of the Lujans but the day that the Writ was issued it was in the custody or the possession of Mrs. Baker and Mrs. Saiz.

Judge Whitmer:

> Who has every right to pick up that child from any foster placement.

Golden Robbins:

> Which I'll have to disagree with, your honor. I don't think they have a right to take it from the Lujans. They might have the right, I don't know what rights they do have to be very frank with you but . . .

Judge Whitmer:

> That agreement indicates there that the foster placement can be terminated at reasonable notice by either party and they are a party to that agreement. They have been receiving foster care payments from the Division of Family Services since the child was placed there.'' (R.7)

Thus from a legal standpoint, the Lujans had no rights upon which to remain in Court and the Court properly granted the motion to dismiss propounded by the Defendants, which motion needed no evidence as claimed by the Appellants.

POINT III

THE JUVENILE COURT HAD PROPER JURISDICTION OVER THE LUJANS AND THE QUESTION RAISED REGARDING JURISDICTION OVER F____ R____ H____ IS IMPROPERLY RAISED ON APPEAL.

At the outset of Point II, Appellants claim there is an Order to Show Cause erroneously in the records, yet use this appeal as the forum to propound their position relative to it. Respondents contend that this entire segment of Appellants' Brief is improperly before this Court.

The issue presented to the Juvenile Court by Appellants was whether the placing of F____ R____ H____ with a new Foster Family detained him illegally — hence the petition for Writ of Habeas Corpus. Point III of the Appellants' Brief does not speak to that issue but attempts to attack the original jurisdiction over the child more than 3 years after time for appeal in that original action had run. Utah Code Annotated, Section 55-10-112 sets forth the only criteria by which jurisdiction or other objections can be made and/or challenged, on appeal. At the time of the original order in 1971 no appeal was taken, jurisdiction was not challenged and as the record indicated (R. 10) all parties with rights and interests in the outcome of the action were at those original hearings and had every opportunity to follow Utah procedure to effectuate challenges.

Further, there is no indication that the Lujans complained of jurisdiction when the Division of Family Services placed F____

R____ H____ in their home, or when they signed the contractual agreement with the Division that gave the Division authority to remove F____ R____ H____ upon due notice. Instead, through petitioning for an extraordinary writ they are attempting to attack collaterally the proper original jurisdiction over the child and their acquiescence in the entire proceedings. Simply because the Division of Family Services exercised its option under the agreement with Court approval to their disadvantage does not give the Lujans the right, or make them proper parties, to raise these issues at this time. This Court has consistently held that the Writ of Habeas Corpus is not a substitute for appellate review. *In State v. Morgan, U.2d____*, 527 P.2d 226 (1974) this Court held:

> "The writ of habeas corpus cannot be used for the purpose of procuring what in substance and effect is a second appeal, *whether it is prosecuted pending the appeal or thereafter.*" (Emphasis added)

In this present action, the Appellants are trying to raise issues that were never originally appealed more or less after an appeal had been taken. This is totally improper with the dictates of this court and should be disregarded as bearing on the issue of standing and dismissal of the petition.

The Appellants state in their brief on Page 11:

> "If there had been any part of the Juvenile Court record put in evidence, the Appellants would have contested jurisdiction of the Juvenile Court."

None of this record alluded to was introduced in evidence, yet the Appellants complained about something that was not and is not in the record and is not pertinent to the entire matter. The petition

was dismissed on legal grounds as expressed in Point II and did not need go to the introduction of evidence. The Appellants cannot now claim that the Court should take judicial notice of something that is not in the record. The Appellants fail to point out to this Court why they are the proper parties to raise the petition and where the Court erred in dismissing the action.

Regarding jurisdiction of the Lujans as raised by Appellants the thrust of the contention is confusing; Respondent presumes reference is made to the present action. If this is a correct presumption, they filed a petition for writ of habeas corpus in District Court, thereby subjecting themselves to jurisdiction of that Court. That Court properly certified the question to the Juvenile Court. The fact that the petition was brought by Appellants in behalf of F___ R____ H____ gives the Court complete jurisdiction over them, for once the Court has jurisdiction over the minor (which it did, here) those guardians, next friends, etc., likewise are under the jurisdiction of the Court.

If, by chance, the Appellants are referring to the 1971 hearing, the Lujans never had any rights in the case at that time, for legal custody of the child was the issue before the Court and before parental rights were terminated such legal custody was in the natural parents and not the Lujans. The Lujans were not required to have a day in Court because they had no legal rights to assert. The Juvenile Court made this extremely clear as Page 9 of the record:

Golden Robbins:

> But I don't think, I don't think the Court, the Juvenile Court, doesn't have any jurisdiction in the first place in these proceedings that you have out here that those are

not a jurisdictional question. The Lujans were not made a party to those proceedings.

Judge Whitmer:

They are not entitled to be.

Michael Stead:

They don't have to be made a party.

Judge Whitmer:

They don't have to be made a party.

Golden Robbins:

Well, I don't think you can take anybody's rights away from them without....

Judge Whitmer:

Well, the question is what rights do they have. You see, that's what Mr. Stead is saying. They have no rights. Based on that foster care agreement that they signed, the arrangement could be terminated at any time, at the option of Family Services, no..."

Further, the record is clear, that Appellants were attempting to use habeas corpus as a method to challenge the purely administrative decision of the Division of Family Services which has nothing to do with the child being illegally detained. Mr. Robbins, counsel for Appellants, stated:

"I was hoping that we could get the evidence in as to the care of the infant and ..." (R. 8)

Thereafter Judge Whitmer responded:

> "I don't think anybody is arguing that the Lujans have not been adequate foster parents up to this point. If they hadn't been, Family Services would have removed the child. That's not the point. I think that the Family Services made an administrative decision based on the age and health of the Lujans." (R. 8)

The attempt to get such evidence in is surely an attempt to get the Juvenile Court to over turn the Division of Family Services order without going through the process of appealing the decision of the Division directly. The use of habeas corpus as the substitute for petitioning the Division for the reconsideration of the facts relative to care and support of the child (which was not done here as far as the record indicates) is improper.

As the Court pointed out on Page 6 and 7 of the records:

Judge Whitmer:

> The point is that Family Services administratively can do anything they want to. I suppose that the Lujans might have some kind of . . . .I don't know whether a civil action against Family Services would lie for damages. That' another issue. But, on the issue of illegal detention, the child is in the custody of Family Services, not in the custody of the Lujans, and Family Services simply move, in effect, out of a foster home, which they have every right to do."

* * *

"Well, all I'm saying is that I don't think a writ of habeas corpus is the proper way to get it before the Court because the child is not being illegally detained."

Thus, it is clearly seen that the cases cited by appellants to support their contention regarding "neglected, dependent, or delinquent" children which would allow the Juvenile Court to invoke jurisdiction *(In re State in the Interest of Graham*, 110 Utah 159, 170 P.2d 172 (1946)) add nothing to the issues before this Court, for there is nothing in the entire record which would allow this Court to make a decision thereon.

Respondent respectfully urges this Court to recognize the actual issue before this Court — why the petition was dismissed — and disregard the points raised by Appellant which do not bear on that decision. This Court has long held that issues not presented for the trial judge to rule on may not be raised on appeal. *State v. Smith*, 16 Utah 2d 374, 401 P.2d 445 (1965).

POINT IV

THE JUVENILE COURT RULED PROPERLY THAT THE CASE AT BAR NEED NOT BE RETURNED TO THE DISTRICT COURT FOR FURTHER DETERMINATION.

Appellants focus their final argument and case law support on the wrong provision of Utah Code Annotated, Section 55-10-78. There are two mutually exclusive provisions pertaining to custody matters and the Appellants have not reached the crucial language which is dispositive of this case. Appellants quote *State of Utah in*

the Interest of Rae Lyn Thornton, 18 Utah 2d 297, 422 P.2d 199 (1967) as support for their view that the Juvenile Court is required to send the case back to the District Court. That case interpreted the one provision of Utah Code Annotated, Section 55-10-78 which states:

> "A district court may at any time decline to pass upon a question of custody and may certify that question to the juvenile court for determination or recommendation."

This provision was instituted primarily for situations where the Juvenile Court had no relationship with the parties and when the District Court had original and exclusive jurisdiction over the parties. It is a matter quite understandable that the District Court might desire to have the expertise of the Juvenile Court help in the determination of the interests of the minor children. But neither *Thornton* nor *Anderson v. Anderson,* 18 Utah 2d 89, 416 P.2d 308 (1966), nor *In re State in the Interest of Valdez*, 29 Utah 2d 63, 504 P.2d 1372 (1973) cited by Appellants, is a situation where the Juvenile Court already had jurisdiction over the matter before the case was filed in District Court. Surely, those cases are correct in their analysis that if the Juvenile Court has nothing to do with the parties, the subject matter, or the case at all, the District Court cannot divest itself of jurisdiction.

In the present action, however, the Juvenile Court had continuing jurisdiction over the entire matter before, during, and after the time when the petition was filed in District Court. Therefore, the provision, which the cases cited above interpret, is not pertinent or applicable to this case. As cited earlier under Respondent's Point I, the following language of Utah Code Annoted, Section 55-10-78 is the applicable statute:

> "Nothing contained in this act shall deprive the District Courts of jurisdiction to appoint a guardian for a child, nor of jurisdiction to determine the custody of a child upon writ of habeas corpus or when the question of custody is incidental to the determination of a cause in the district court; *provided that in case a petition involving the same child is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same child, the district court shall certify the question of custody to the juvenile court for determination.*" (Emphasis added)

If the above language was to mean nothing different from that language cited by Appellant, then the whole purpose of "spelling out" the procedure when the Juvenile Court already had prior continuing jurisdiction would be moot. Such an interpretation cannot be reached. The legislature specifically enacted the above language to require by use of the command "shall certify" that the District Court transmit the entire proceedings if the issue in the writ involves only the child and the Juvenile Court had prior continuing jurisdiction.

In *Anderson, supra,* the Court said that when the District Court "has taken jurisdiction, the jurisdiction of the Juvenile Court may be invoked . . . but its action must be regarded as supplementary to the action of the District Court." This is in total harmony with the position of Respondent and the language of the statute for when the Juvenile Court already has jurisdiction over the minor child, any writ of habeas corpus must be certified to the Juvenile Court for matters concerning custody, for otherwise the District Court would be usurping its position to defeat the entire purpose of the

Juvenile System as it relates to wards of the state and in effect all persons who are in the custody of the Division of Family Services.

Therefore, Respondent strongly opposes Appellants argument and urges that the foregoing analysis is correct and proper and that this Court reject the contention of Appellants.

CONCLUSION

The Respondent respectfully submits that the certification of the petition for writ of habeas corpus to the Juvenile Court was proper, that the case was decided on a legal point not requiring the introduction of evidence, and that this case under the foregoing circumstances need not be referred back to the District Court for further proceedings.

Therefore, it is urged that this Court affirm the decision of the Juvenile Court.

Respectfully Submitted,

VERNON B. ROMNEY
Attorney General

FRANK V. NELSON
Assistant Attorney General